CONSPIRACY.

Argument of Reverdy Johnson With Regard to Jurisdiction.

MILITARY vs. CIVIL OFFENSES.

of War-Military Treason a New of slaves and not of freemen. Plea.

Is commences by saying, has the Commission jurisdiction of the cases before it? That question, in all courts, civil, criminal, or military must be considered and answered affirmatively before judgment can be pronounced, and it must be answered correctly, or the judgment pronounced is void. Ever an interesting and vital inquiry, it is of engrossing interest and awful importance when error may lead to the unauthorized taking of human life. In such a case the court called upon to render, and the officer who and cannot fail, to awaken great solicitude and

induce the most mature consideration The nature of the duty is such that even honest error affords no impunity. The legal personal consequence even in a case of honest mistaken judgment cannot be avoided Every member composing the commission will meet all the responsibility that belongs to it as becomes gentlemen and soldiers. So far the question of juwere overruled. But that will not, because propgrave nature demands. It was for them to decide it, and at this time for them alone. The not and could not decide it. If unauthorized. it is a mere nullity-the usurpation of a power not vested in the executive, and conferring no be to make the executive the exclusive and conclusive judge of its own powers, and that would be to make that department omnipotent. The powers of the President under the Constitution

are great, are amply sufficient to give all needed efficiency to the office. The convention that formed the Constitution, and the people who adopted it, considered these powers sufficient and granted no others. In the minds of both (and subsequent events have served to strengthen the impression) danger to liberty is more to be dreaded from the executive than from any other department of the Government. So far, therefore, from meaning to extend its powers beyond what was deemed necessary to the wholesome operation of the Government, they were studious to place them beyond the reach of abuse. With this view, before entering on the execution of his office, the President is required to take an oath to " faithfully discharge its duties and to the best of his ability preserve, protect and de fend the Constitution of the United States." Ho

is also flable " to be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." If he violates the Constitution; if he fails to preserve it, and, above all, if he usurps powers not granted, he is false to his official oath and liable to be indicted and convicted, and to be imprisoned. For such an offense his removal from office is the necessary consequence. In such a contingency " he shall be removed " is the command of the Constitution. What stronger evidence could there be that his powers, all of them, in peace and in war, are only such as the Constitution confers? But if this was not evident from the instrument itself, the character of the men who composed the Convention that framed the Constitution and the spirit of the American people at that period would prove it. Hatred of a monarchy, made the more intense by the conduct of the monarch from whose government they had recently separated, and a deep seated love for constitutional liberty, made the more keen and active by the sacrifices which had illustrated their revolutionary career, constituted them a people who could never be induced to delegate any executive authority not carefully restricted and guarded so as to render its shuses or usurpation almost impossible. If these observations are well founded, it follows that ap exclusive act beyond executive authority can furnish no defense against the legal consequences of what is done under it. Unless jurisdiction exists, the authority to try does not exist, and whatever is done is coram non judice and usterly void. This doctrine is as applicable to military as to other courts. The question, then, being always open, and its proper decisions essential to the validity of its judgment, the Commission must decide before pronouncing such judgment whether it has jurisdiction over these parties and the crime imputed to them. That a tribunal like this bas no jurisdiction over other than military offenses, is believed to be evident. That ofcivil offense, must therefore be made to appear, and when it is, it must also appear that the mili tary law provides for its trial and punishment by a military tribunal. If that law does not furcase is unprovided for, and, as lar as the military either the civil, common or statute law embraces every species of offense that the United States

or the States have deemed it necessary to punish, in all such cases the civil courts are clothed with every necessary jurisdiction. In a military court, if the charge does not state a "crime provided for generally or specifically by any of the articles of war." the prisoner must be discharged. (O. Brien, p. 235) Nor is it sufficient that the charge is of a crime known to the military law. The offender, when he commits it, must be subject to military jurisdiction. The general law has "supreme and undisputed jurisdiction over all. The military law puts forth no such pretension; it aims solely to enforce on the soldier the additional duties he has assumed. It consti-

tutes tribunals for the trivl of breaches of milttary duty only." (O. Brien, 26, 27. "The one code (the civil) embraces all citi-

no authority to declare war, to raise and support eroment and regulation of the hand and paval knows to be ample for the purpose. forces" No artifice of ingenuity can make these If it be suggested that the civil courts and jurfrom other provisions of the Constitution So and upon our civil institutions themselves, the

that they were unwilling to leave him to the safe.

guards which a proper construction of the Con-stitution, as originally adopted, furnished. In this they resolved that nothing should be left in doubt. They determined, therefore, not only to guard him against Executive and Judicial, but sgainst Congressional abuse. With this view they adopted the fifth constitutional amendment, which declares that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger."

This view is elaborated by reference to the highest legal authority and the constitutional questions are discussed at length.

The sixth amendment, which our fathers thought so vital to individual liberty when assailed by governmental prosecution, is but a dead letter, totally inefficient for its purpose, whenever the government shall deem it proper to try a cit-The Constitutional Limit of Execuizen by a military commission. Against such a
tive Powers—The Intquity of a Star
doctrine the very instincts of freemen revolt
Chamber Fully Exposed—Secretary It has no foundation but in the principles of un-Stanton vs. all Precedent-What restained tyrannic power and passive obedience. Crimes are Embraced in the Articles If it be well founded then are we indeed a nation

Offense-The Intelerable Proceed. I proceed now to examine with somewhat of ings of the Prosecution-A Powerful particularity the grounds on which I am informed your jurisdiction is maintained

Mr. Clampitt read the argument addressed to sively in Congress. War can only be declared by the President and gentlemen of the Commission, by that body. With its origin, the President has signed by Hon. Reverdy Johnson, and concurred no concern whatever. Armies, which are neces The Latest and Most Imin by Mr. Frederick A. Aiken and Mr. John W. a soldier, without its authority, can be brought into service by the Executive. He is as impotent to that end as a private citizen.

And armies, too, when raised by Cougressional authority, can only be governed and regulated by "rules" prescribed by the same authority. The Executive possesses no power over the soldier, except such as Congress may, by legislation, confer upon him. If then, it was true that the creation of a military commission, like the present, is incidental to the war power, it must be authorized by the department to which that power belongs, and not by the Executive, to whom no portion belongs. And if it be said to be involved in the power "to make rules for the government have a concern peculiar to themselves. As to each, a responsibility is involved which, however conscientiously and firmly met, is calculated, longer and not by the formula of the land and naval forces, the name is more intimately connected with the bistory of MATERIA MEDICA of the United States, or gress, to whom that power also exclusively be longs, and not by the Executive. Has Congress than that of then, under either power, authorized such a commission as this to try such cases as these? It is confidently asserted that it has not. If it has let the statute be produced. It is certainly not one by that of the 10th of April, 1806, "establishing" articles for the government of the armies of the United States." No military courts are there mentioned or provided for but courts martials and risdiction has not been discussed. The pleas courts of inquiry. And their mode of appointment which specially presented it, as seen as filed, and organization and of proceeding, and the authority vested in them, are also prescribed. Milierly it should not, prevent the commission from tary commissions are not only not authorized, but are not even alluded to. And, consequently the parties, who ever these may be, who, under

that act, can be tried by courts martials or courts | His Compound of WILD CHERRY has commission under which they are acting does of inquiry, are not made subject to trial by a military commission. Nor is such a tribunal mentioned in any prior statute, or in any subsequent one, until those authority upon them. To hold otherwise would of the 17th of July, '62, and the 3d of March. '63. In the fifth section of the first, the records of "Military Commissions" are to be returned after their introduction, attained a reputation for revision to the Judge Advocata General, whose appointment it also provides for. But how such Commissions are to be constituted. are to try, are not provided for. In the thirtystated in respect to the first are true of this. forcibly presents itself. If Military Commissions can be created, and from their very nature have jurisdiction to try all military offenses -the ground on which your jurisdiction is said in part to rest--why was it necessary to give them the power, by express words, to try persons "lurking or acting as spies?" The military character of such an offense could not have been doubted. What other reason, then, can be suggested for conferring the power by express language than that without it would not be possessed? Before these statutes were passed (?) a Commission, called a Military Commission, had been issued by the Executive to Messrs. Davis, Holt and Campbell, to examine into certain military claims against the Western Department, and Congress, by its resolution of the 11th of March. 1862 (No. 18), provided for the payment of its awards. Against a Commission of that character no objection can be made. It is but auxillary to the auditing of demands upon the Govment, and in no way interferes with the constitutional right of the citizen. But until this rebellion a Military Commission like the present. organized in a loyal State or Territory, where the courts are open, and their proceedings unobto be conferred on you-a jurisdiction involving bear a comparison with it in this disease. not only the liberty, but the lives of the parties on trial-it is confidently stated is not to be found sanctioned or the most remotely recognized or even alluded to by any writer on mili tary law in England or the United States, or in any legislation of either country. It has its oriesy of secession, out of which that sprung, nothing is more certain, in my epinion, than that,

February preceding, declaring martial law. By this order he authorized the trial of certain offenses by Military Commissions, regulated their proceedings, and limited the punishments they might inflict. From their jurisdiction, however, he accepts cases "clearly cognizable by Courtfenses defined and punished by the civil law are Martial," and in words limits the cases to be tried not subjects of military jurisdiction, is of course to such as are (I quote,) "not provided for in true. A military, as contradistinguished from a the act of Congress establishing rules and arti- ONE TRIAL, AND YOU WILL NEVER USE AN cles for the government of the armies of the United States," of the 10th of April, 1806. The second clause of the order mentions, among other offenses to be so tried, "assassinsnish a mode of trial or affix a punishment, the tion, murder, poisoning;" and in the fourth (correctly, as I submit, with all respect for a conpower is concerned, is to go unpunished. But as trary opinion), he states that "the rules and articles of war" do not provide for the punishment of any one of the designated offenses, "even when committed by individuals of the army upon the persons or property of other individuals of the same, except in the very strictest case of the inth of the articles." The authority for even this restricted Commission, Scott, not more emi- BRAIN, DEPENDING UPON DERANGEnent as soldier than civilian, placed entirely upon the ground that the named offenses, if committed in a foreign country by American troops, could not be punished under any law of the United States then in force. "The Constitution of the United States and the rules and articles of war." he said, and said correctly, provided no court

tional liberty, and, the rebellion ended, perish

with the other then and forever. But to proceed.

Such Commissions were authorized by Lieuten-

ant General Scott in his Mexican campaign.

When he obtained possession of the city of Mex,

ico, he, on the 17th of September, 1847, repub-

lished, with additions, his order of the 16th of

whom or on whom' committed Scott's Autobiography, 392. And he further tells us that even this order. so limited and co called for by the greatest pubzens whether soldiers or not; the other the lie necessity, when handed to the then Secretary FEVER military) has no jurisdiction over any citizen as of War (Mr. Marcy) "for his approval," "a startle at the title (martial law order) was the The provisions of the Constitution clearly only comment he then, or ever made on the submaintain the same doctrine. The Executive has ject," and that it was "soon silently returned as too explosive for safe handling." "A little later glass of the Bitters, taken an hour before each meal, will (he adds) the Attorney General (Mr. Cushing) obviate the ill effects of the most unhealthy climate, and make rules for the government and regulation of called and asked for a copy, and the law officer screen the person taking it against disease under the met with in Females of all ages, whether married or uneither force. Those powers are exclusively in of the Government, whose business it was to Congress. The army cannot be raised or have speak on all such matter, was stricken with legal law for its government and regulation, except as dumbress" (Ib.) How much more startled and Sold by Bruggists and Grocers Gen. which space will not admit an elucidation. I omit it for Congress shall provide. The power of Congress more paralyzed would these great men have been was granted by the Convention without objection | had they been consulted on such a commission In England the King, as the generalissimo of the as this! A commission not to sit in another whole Kingdom, has the sole power, though Par | country, and to try offenses not provided for by fisment has frequently interposed and regulated law of the United States, civil or military, then for itself. But with us it was thought safest to in force; but in their own country and in a part give the entire power to Congress, since other of it where there are laws providing for their wise summary and severe punishment might be trial and punishment, and civil courts clothed inflicted at the mere will of the Executive - 3 with ample powers for both, and in the daily and Story Com Sec 1,192) No member of the undisturbed exercise of their jurisdiction. And Convention, or any commentator on the Consti | where, if there should be an attempt at bisturbsution, since has intimated that even this Con. ance by a force which they had not the power to gressional power could be applied to citizens not control, they could invoke (and it would be his belonging to the army or navy. The power duty to afford it) the President to use the mili given to Congress is to "make rules for the gov. tary power at his command, and which everybody

words include those who do not belong to the les for this District could not be safely relied upon army and navy And they are, therefore, to be for the trial of these cases, because either of inconstrued to exclude all others, as if negative competency, disloyalty or corruption, it would be words to that effect had been added. And this an unjust reflection upon the judges, upon the BULL'S SARSAPARILLA, is not only the obvious meaning of the terms, people, upon the Marshal-an appointee of the considered by themselves, but is demonstratable President, by whom the jurors are summonedjealous were our ancestors of ungranted power, very institutions on whose integrity and intelliand so vigilant to protect the citizen against it | gence the very safety of our property, liberty,

Concluded on Second Page

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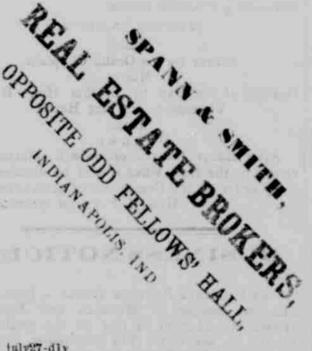
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